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Attorneys for Plaintiff Epic Games, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

Epic Games Inc. v. Google LLC et al.,
Case No. 3:20-cv-05671-JD

Case No. 3:20-cv-05671-JD
Case No. 3:21-md-02981-JD

**DECLARATION OF JOSHUA KIM IN
SUPPORT OF PLAINTIFF
EPIC GAMES, INC.'S MOTION FOR A
PRELIMINARY INJUNCTION**

Date: June 2, 2022 at 10:00 a.m
Courtroom: 11, 19th Floor
Judge: Hon. James Donato

1 I, Joshua Kim, declare as follows:

2 1. I am currently the Director of Business Operations at Bandcamp. In March 2022,
3 I became an employee of Epic Games, Inc. (“Epic”) after Bandcamp was acquired by Epic. I
4 submit this declaration in support of Epic’s Motion for a Preliminary Injunction. The contents of
5 this declaration are based on my personal knowledge. If called as a witness, I could and would
6 competently testify thereto.

7 2. I have worked as the Chief Operating Officer, and subsequently the Director of
8 Business Operations, at Bandcamp for seven years. In these roles, I oversee the day-to-day
9 operational functions of the Bandcamp business and design and implement policies to support
10 Bandcamp’s “artists-first” approach.

11 3. On September 28, 2020, Google announced that it was “clarifying” its Payments
12 Policy “to be more explicit that all developers selling digital goods in their apps [would be]
13 required to use Google Play’s billing system.” Google set a compliance deadline of
14 September 30, 2021. A true and correct copy of Google’s September 28, 2020 blog post titled
15 “Listening to Developer Feedback to Improve Google Play” is attached as Exhibit A.¹

16 4. For years prior to Google’s announcement, Google’s policies explicitly excluded
17 music sales from the requirement to use Google Play’s billing system or pay the attendant fee
18 Google charges for its use. Because Google framed this announcement as a policy
19 “clarification” rather than a “change,” however, it was unclear whether Bandcamp would be
20 permitted to continue to use our own payment solution for in-app purchases of digital goods, as
21 we had done without issue for the previous six years. Therefore, we needed further guidance
22 from Google to understand the impact of the clarification on our business.

23 5. On November 16, 2020, December 7, 2020, and March 25, 2021, I emailed an
24 acquaintance who works at Google to see if he had any contacts on the Android app team that I
25 could connect with regarding our questions about the policy clarification.

27 ¹ Google’s blog post is available at [https://android-developers.googleblog.com/2020/09/listening-](https://android-developers.googleblog.com/2020/09/listening-to-developer-feedback-to.html)
28 [to-developer-feedback-to.html](https://android-developers.googleblog.com/2020/09/listening-to-developer-feedback-to.html).

1 6. On April 21, 2021, Randy Gelber, Chief Financial Officer of Epic, introduced me
2 via email to Ms. Purnima Kochikar, Vice President of Google Play Apps and Games, to facilitate
3 discussion of my questions about Google's clarified payment policy. I knew Mr. Gelber through
4 initial discussions about Epic's possible acquisition of Bandcamp, which were ongoing at that
5 time. I told Mr. Gelber that we had not been able to make contact with anyone at Google
6 regarding its policy clarification, so he connected me with Ms. Kochikar. The same day, I
7 emailed Ms. Kochikar, writing that Bandcamp "had some questions around the recent Play store
8 billing policy clarifications, specifically regarding digital music sales/downloads (which were
9 previously explicitly excluded from in-app purchase requirements)." A true and correct copy of
10 this email is attached as Exhibit B.

11 7. On May 2, 2021, Ms. Kochikar responded to my email stating that she would
12 follow up to address my questions. (*See* Ex. B at 3.)

13 8. I sent Ms. Kochikar follow-up emails on May 6, May 17, May 24, June 1
14 and June 21, 2021. (*See id.* at p. 2-3.) I also emailed the play-bd@google.com listserv on June 3
15 and June 7, 2021, reiterating my earlier message to Ms. Kochikar about the Play Store billing
16 policy clarification.

17 9. In my email to Ms. Kochikar on Monday, June 21, 2021, I wrote that I was
18 "following up [] with some urgency, and adding some additional context," explaining that we
19 were "officially in a time frame where this [was] becoming an urgent matter to resolve." I stated
20 that "[a]ny changes to how Bandcamp's digital music sales are treated would have a huge impact
21 on the millions of artists who use Bandcamp," and that "we want[ed] to begin planning for and
22 communicating with them as soon as possible if there [would be] any impact to their income on
23 Bandcamp (which they are increasingly depending on as a solid revenue channel)." I also
24 explained our "hope [] that Bandcamp's treatment in the Play store with regard to digital music
25 sales w[ould] not change as Google's prior communications [] confirmed that it would not be a
26 substantive update to the policies, but rather a clarification to the policies as they had already
27 existed." I reminded Ms. Kochikar that "the existing policies had explicitly excluded music
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1 sales” from Google’s requirement to use Google Play Billing and the attendant 30% revenue
2 share. (*See id.* at 2-3.)

3 10. Later that day, Ms. Kochikar responded that she would get back to me by the end
4 of the week. (*See id.* at 2.)

5 11. Between June 21, 2021 and July 15, 2021, I sent Ms. Kochikar follow-up emails
6 (on June 21, June 24, June 28, July 1, July 7 and July 15, 2021) seeking feedback on my previous
7 email and offering to provide further information about Bandcamp. On July 1, 2021, I
8 emphasized again that this issue was “becoming urgent for [Bandcamp] as we need[ed] to plan
9 accordingly as any change in policy [would have] a potentially huge impact on our millions of
10 artists.” (*See id.* at 1.)

11 12. On July 16, 2021, Ms. Kochikar posted a blog post on the Android Developers
12 Blog explaining that Google was “giving developers an option to request a 6-month extension,
13 which [would] give them until March 31, 2022 to comply with [Google’s] payment policy.” A
14 true and correct copy of Google’s July 16, 2021 blog post titled “Allowing developers to apply
15 for more time to comply with Play Payments Policy” is attached as Exhibit C.²

16 13. On July 22, 2021, Ms. Kochikar’s assistant responded to me, providing dates and
17 times for a video call with Ms. Kochikar between August 4, 2021 and August 6, 2021. I
18 responded to Ms. Kochikar’s assistant the next day to schedule a video call on August 4, 2021.
19 (*See Ex. B* at 1.)

20 14. On August 4, 2021, I participated in a video call with Ms. Kochikar and Michael
21 Marchak, Director of Strategy and Operations at Google. During our video call, Ms. Kochikar
22 and Mr. Marchak explained that Google would in fact be requiring Bandcamp to comply with
23 Google’s revised payment policy by September 30, 2021, or by March 31, 2022 if Bandcamp
24 applied for a six-month extension. Ms. Kochikar and Mr. Marchak provided information about
25 Google’s Play Media Experience Program, which allows certain apps selling digital media to pay
26 Google a 15% revenue share (instead of 30%) in exchange for “[i]ntegration of specific Google

27 ² Google’s blog post is available at [https://android-](https://android-developers.googleblog.com/2021/07/apply-more-time-play-payments-policy.html)
28 [developers.googleblog.com/2021/07/apply-more-time-play-payments-policy.html](https://android-developers.googleblog.com/2021/07/apply-more-time-play-payments-policy.html).

platforms and APIs [application program interfaces] based on type of media content,” including integration of Google Play Billing. Google’s online description of the program also notes that “[a]dditional requirements apply depending on the type of media content.”³

15. On August 6, 2021, Mr. Marchak sent me an email with links to more information on Google’s changes to its standard revenue share and its Play Media Experience Program, as well as a link to the application for an extension to comply with Google’s revised payment policy. He wrote, “I realize you were hoping for different information.” He also asked that I “please plan to reconnect before [we] communicate[d] changes to [our] community.” A true and correct copy of this email is attached as Exhibit D.

16. On August 12, 2021, I replied to Mr. Marchak and Ms. Kochikar, stating that Bandcamp had “hop[ed] that the prior carveout for digital music downloads would continue, and [we were] disappointed that [was] not the case.” I added that Bandcamp appreciated Google “continuing to think creatively/dynamically about this,” and that “I look[ed] forward to continuing the conversation.” I also wrote that I had some follow-up questions that I was hoping to address with Google in a phone call in the coming days. (*See* Ex. D at 3.)

17. We subsequently submitted an application for the six-month extension of time described above. A true and correct copy of the extension application is attached as Exhibit E.

18. On August 17, 2021, Google informed us that the Bandcamp app was eligible for an extension until March 31, 2022 to come into compliance with Google’s revised payments policy. (*See* Ex. E at 3.) Google has since stated that “developers that are not compliant with the Payments policy [on March 31, 2022] will not be able to submit app updates until they bring their app into compliance unless an update is needed to fix a critical security issue” and that “[s]tarting June 1, 2022, any app that is still not compliant will be removed from Google Play.”⁴

19. On August 18, 2021, Mr. Marchak emailed asking that I send any questions that I had via email in advance of a call. I replied the next day, August 19, 2021, stating that

³ <https://play.google.com/console/about/programs/mediaprogram/>

⁴ <https://support.google.com/googleplay/android-developer/answer/10281818?hl=en>

1 Bandcamp's questions related to: "Physical goods that come with digital bonuses associated
2 with them (which is currently permitted in the iOS store)[,]" "[h]ow we'd go about integrating
3 the 30% fee into our price structure," and "whether it can be done on top of the price set by the
4 artist, or if there [are] some limitations on how that's integrated." (*See* Ex. D at 2-3.)

5 20. On August 19, 2021, I had a second video call with Mr. Marchak and
6 Ms. Kochikar, during which Google repeated information regarding its revenue share and the
7 Play Media Experience Program.

8 21. In addition, on September 13, 2021, Mr. Marchak sent me an email "[g]etting
9 back to [my] questions", stating that "[a]s long as payments are primarily for physical goods,
10 utilizing Play billing is not required[.]" He added that the Bandcamp app "c[ould] communicate
11 [Google's] fees to users or artists as long as they are depicted accurately" and asked for any
12 "mocks" of such communications to make sure that we were "all on the same page."
13 Mr. Marchak once again included links to further information about Google's Play Media
14 Experience Program and the changes to its standard revenue share. (*See id.*)

15 22. After discussing internally with other Bandcamp executives, we determined that
16 integrating Google Play Billing would not work for our community or our business.

17 23. On December 6, 2021, Mr. Marchak emailed me to introduce Shanna Velez, a
18 new partner manager on the Google Play team. The same day, Ms. Velez emailed to remind me
19 of the upcoming March 31, 2022 deadline to comply with Google's Payments Policy, which she
20 noted was "fast-approaching." She added that she had nominated Bandcamp for the Play Media
21 Experience Program, through which, "[i]f accepted, Bandcamp would be eligible for a service
22 fee of 15% on all applicable earnings" in exchange for integrating Google Play Billing. In
23 addition, Ms. Velez also noted that this reduced revenue share was "in exchange for product
24 integrations across key areas." (*See id.* at 1-2.)

25 24. On December 10, 2021, Ms. Velez sent another email stating Bandcamp had been
26 approved for the Play Media Experience Program under Google's Audio Distribution
27 Accelerator Program ("ADAP"), so that it would be "eligible for a service fee of 10% (not 15%
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1 as [] previously mentioned) on all applicable earnings.” Again, this reduced revenue share
2 would require Bandcamp to integrate Google Play Billing and develop additional technology
3 features for the benefit of Google. Specifically, Ms. Velez stated that Google’s offer was “in
4 exchange for integration with Google Play Billing [and] developing features across key surfaces
5 such as WearOS, Auto, TV.” (*See id.* at 1.)

6 25. Ms. Velez followed up with me via email on December 15, 2021, writing that she
7 “underst[oo]d that integrating with Play Billing is a big decision for Bandcamp’s business.” She
8 reiterated that she believed Google’s integrations and tools in the “ADAP program” would be
9 “valuable” and provide “insights to your team.” (*See id.*) On January 7, 2022, Mr. Marchak
10 followed up on Ms. Velez’s email.

11 26. I did not respond to these emails, but as I had made clear in the months leading up
12 to Google’s December 2021 emails, Google’s offer of a reduced revenue share does not change
13 our conclusion that Google’s decision to require Bandcamp to exclusively use Google Play
14 Billing for payments for digital goods and services and pay Google a revenue share does not
15 work for our community or our business.

16 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
17 and correct and that I executed this declaration on April 28, 2022 in Santa Cruz, California.
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20 _____
Joshua Kim